



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

27 JUL 2006

Dean H. Nakamura
Bell, Boyd & Lloyd, LLC
P.O. Box 1135
Chicago, Illinois 60690-1135

In re Application of :
CAMPOCHIARO, et al. :
Application No.: 10/526,127 : DECISION ON PETITION
PCT No.: PCT/EP03/09497 :
Int. Filing Date: 27 August 2003 : UNDER 37 CFR 1.181
Priority Date: 28 August 2002 :
Attorney Docket No.: 116566-002 :
For: OCULAR GENE THERAPY :

This decision is in response to applicant's petition to withdraw the holding of abandonment filed 30 May 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 27 August 2003, applicant filed international application PCT/EP03/09497, which claimed priority of an earlier application filed 28 August 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 11 March 2004. Pursuant to 37 CFR 1.485, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 28 February 2005.

On 28 February 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 23 December 2005, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International Application number and international filing date. In addition, applicant was advised of the need to furnish a computer readable version of the sequence listing. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 17 April 2006, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 23

December 2005 within the time period set therein and that above-identified application was abandoned as to the United States.

On 30 May 2006, applicant filed the present petition to withdraw the holding of abandonment.

DISCUSSION

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by applicant, title and docket number. Among the items listed on the receipt are "3. Petition for Extension of Time, 4. Declaration and Power of Attorney (4 pages), 5. Computer-readable form of sequence listing, 7. Paper copy of sequence listing." The receipt is stamped "IAP3 Rec'd PCT/PTO 27 MAR 2006." Thus, it is clear that applicant filed an executed declaration and sequence listing on 27 Mar 2006 accompanied by a petition for a one-month extension of time. However, it is not possible to grant applicant's petition at this time as it does not appear that applicant has presently included a replacement diskette containing the computer-readable form of the sequence listing. Without a report from the Scientific and Technical Information Center (STIC) indicating that the furnished computer readable format of the sequence listing did not contain any errors it is not possible to grant the petition to withdraw.

It is noted that an examination of the combined declaration and power of attorney filed 30 May 2006 finds that the document does not comply with 37 CFR 1.497(a)-(b). The Manual of Patent Examination Procedure (MPEP) states at section 201.03: "An oath or declaration under 37 CFR 1.63 by each actual inventor must be presented. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Where individual declarations are executed, they must be submitted as individual declarations rather than combined into one declaration." The filed declaration contains two signature pages "Page 3 of 3" listing and signed individually by inventors Campochiaro and Kaleko. It appears that the filed declaration was assembled from numerous declarations or the inventors only returned the signature pages, either alternative renders the declaration non-compliant.

CONCLUSION

For the reasons detailed above, applicant's petition under 37 CFR 1.181 is **DISMISSED**.

This application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a

cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459